



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jim C. Spain et al

Group Art Unit: 1651

Serial No.: 10/076,383

Examiner: Irene Marx

Filed: February 19, 2002

For: BIOLOGICAL PROCESS FOR THE PRODUCTION OF ORTHO-AMINOPHENOLS FROM NITROAROMATIC COMPOUNDS

SECOND PETITION TO AWARD EARLIER FILING DATE

Honorable Commissioner of Patents and Trademarks

Alexandria VA 22313-1450

Sir:

This is a second petition to award an earlier filing date in the subject application. The first petition was mailed to the U. S. Patent and Trademark Office (PTO) 03-26-2002, by U. S. Postal System (USPS) First-Class Mail. Our Deposit Account was charged the fee of \$130 for filing this first petition 04-08-2002, 13 days after the petition was mailed to the PTO.

Applicants' attorney respectfully requests the award of a filing date in the subject application of, or earlier than, 16 February 2002.

Applicants submit this second Petition based on the following facts.

1. A provisional application was filed February 16, 2001, S/N 60/269,003.
2. The subject application claiming the priority date of the provisional application was prepared for mailing to the U. S. Patent and Trademark Office 23 January 2002, as evidenced, in part, by applicants' attorney's signatures on forms PTO/SB/05 and PTO/SB/17, both dated 23 January 2002.
3. Once prepared for mailing, the application package was given to Ms Lynnita Robertson, whose Declaration accompanies this petition, for mailing via the U. S. Postal Service. In the Declaration, Ms Robertson declares that the application

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package was mailed to the U. S. Patent and Trademark Office 23 January 2002, by U. S. Postal System (USPS) First-Class Mail.

4. The subject application was due in the U. S. Patent and Trademark Office 16 February 2002 and was mailed from this office by U. S. Postal System (USPS) First-Class Mail 23 January 2002, thus allowing 24 days for delivery. It was believed that 24 days was sufficient for delivery and that neither Express Mail nor a Certificate of Mailing was required.

5. The subject application received a filing date of February 19, 2002, because it was received in the U. S. Patent and Trademark Office on that date.

6. On or about February 8, 2002, an unofficial, undocumented source in the PTO, speaking to another matter, stated that everything going to Post Box 16 was being thoroughly screened because of the anthrax scare, that mail to the PTO was probably delayed because of the screening procedure. Insofar as the undersigned attorney can determine, this mail delay was not communicated to the patent community.

7. The U.S. Postal Service states that First-Class Mail is delivered in 1-3 days. A copy of the USPS Domestic Mailing options Web page showing such delivery schedule is attached hereto. It therefore appears that the failure to deliver the subject application on or before February 16, 2002, was unavoidable, due to delays in the U.S. Postal Service.

8. As for mail delays, it has been held that the word 'unavoidable' is "applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them, in the exercise of this care, to rely upon the

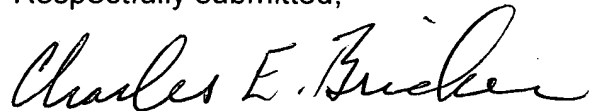
ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all the other conditions of good faith and promptness in its ratification being present." In re Mattullath, 38 App D.C. 497. 514-15 (1912).

9. In the subject case, the application was in transit for 27 days, rather than one week or less, which caused the application to be filed later than February 16, 2002. Thus according to In re Mattullath, which is well established, the delay in filing, due to no fault of the Applicants, may properly be said to be unavoidable.

10. Applicants contend that the delay in filing, based on the above facts, was unavoidable and that mailing the subject application by First-Class Mail January 23, 2002, constitutes a "good faith" effort to file the application prior to the priority date. It is believed that 24 days was sufficient for delivery and that neither Express Mail nor a Certificate of Mailing was required.

11. Accordingly, Applicants request that this Petition be granted, that a filing date in the subject application of, or earlier than, 16 February 2002, be awarded.

Respectfully submitted,



Charles E. Bricker, Reg. No. 26,715
Attorney for Applicants

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937/255-2838